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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2873 OF 2005

Dhanvantari Rugnalaya &
Research Centre, D.L. Vaidya Road,
Dadar, Mumbai-400 028. ...Petitioner.

Vs.

Meena Sagateeya
Municipal Quarters,
G-Building, Room No. 8,
1st Floor, Near Lions Garden,
Kurla East,
Mumbai-400 070. ...Respondent.

Mr. Rahul Nerlekar for the Petitioner.

Ms. Naina Buch i/by Mr. B.B.Dholakia for the Respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 19th December, 2007

JUDGMENT :-

1. The petitioner is an employer and the respondent is a workman as contemplated under the Industrial Disputes Act, 1947 (I.D.Act). As alleged by the petitioner since 1982, the Respondent was employed as Mehatrani. Her past record was not good and memo's, warning/ suspension was issued to her in the past.

2. In the year 1985, the workmen of the petitioner formed Bombay Labour Union. In the year 1986, 1989

and in 1992, settlements signed with the Union. On 4th June 1995, fresh charter of demands.

3. Between September 1995 to December, 1995, respondent committed several acts of misconduct.

4. On 12th January, 1996, charge-sheet issued to the respondent and two others and the enquiry was held. On 04/10/1997, Enquiry Officer held common enquiry and submitted common findings against all of them. On 16/03/1998, the respondent and two others dismissed from service.

5. In the year 1999, all 3 workmen raised Industrial Dispute. One was referred to the 9th Labour Court, Mumbai, while other 2 were referred to 11th Labour Court, Mumbai.

6. On 28/10/2004, award by 9th Labour Court, Mumbai holding findings of the Enquiry Officer not perverse.

7. On 07/02/2005, award by the 11th Labour Court holding findings of the Enquiry Officer as Perverse resulting in contradictory orders in respect of common findings. Hence the present petition.

7. The limited issue in the present Writ Petition as framed by the Presiding Officer, 11th Labour Court, Mumbai, is as under:-

> . Does she (second party) further prove that the findings recorded by the Enquiry Officer are rendered perverse and hence, the enquiry stands vitiated?

8. By the impugned order, the issue No.2 is answered in affirmative and it has been held that the findings recorded by the Enquiry Officer is perverse for non-consideration of material evidence.

9. The important facet in this matter is that on similarly situated workmen who raised industrial disputes, out of 4 matters in 3 matters 9th Labour Court, Mumbai by order dated 28th October, 2004 held that the finding of the Enquiry Officer in question is not perverse. However, by the impugned award dated 7th February, 2005, the 11th Labour Court, Mumbai held that the same findings of the same Enquiry Officer in respect of the respondent held is perverse.

10. After going through the record and after considering the rival contentions as raised, based upon the authorities cited by both the counsel with regard to the law of domestic enquiry, jurisdiction and power of Court/Tribunal to interfere in findings of such enquiry, I find that there is no findings whatsoever referred by the Labour Court with regard to the findings as given by the 9th Labour Court, Mumbai. Though admittedly, the awards dated 28/10/2004, were part of the record of the 11th Labour Court. The submissions were made by the petitioner based upon the same. Therefore, without going further into the matter, I am of the view that the 11th Labour Court, Mumbai ought to have considered the findings so recorded by the 9th Labour Court, Mumbai as it was arising out of the same incident and industrial dispute raised between the parties, specially when admittedly, Enquiry Officer held the common enquiry and submitted the common findings. The re-appreciation of the evidence in the facts and circumstances of the case, therefore, need to be reconsidered after taking into consideration the award dated 28/10/2004 passed by the 9th Labour Court, Mumbai in these matters. The statement has been made at the bar that award and the proceedings against

those 3 workmen remained unchallenged and therefore, became final.

11. The another facet is that once there is a decision given on similarly situated matters arising out of the common findings and enquiry report, it was obligatory on the part of the 11th Labour Court, either to accept the same findings and or to distinguish the same. The impugned judgment therefore is illegal and bad in law on this count itself, as the reasoning in either way goes to the root of the matter.

12. The petition is, therefore, allowed in terms of prayer clause (a) to the above extent. The matter is remanded back. The concerned Labour Court to dispose of the matter after giving due notices and hearing to both the parties, preferably within four months, on the same issue. All points in respect of the same issue are kept open to reconsider and reassess the whole material available on the record.

13. The petition is allowed, accordingly with no order as to costs.

(ANOOP V. MOHTA, J.)